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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,828	11/29/2000	Paul J. Rucinski	RUC-100DFDXC2	8718

23557 7590 09/17/2003

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EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/17/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/725,828

Applicant(s)

RUCINSKI, PAUL J.

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 24-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-17 is/are rejected.
- 7) ☒ Claim(s) 4 and 18-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 18 June 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8,10&11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: *Detailed Action*.

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DETAILED ACTION

Election/Restrictions

1. Applicant's election of the invention of claims 1-23 in Paper No. 13 is acknowledged. Claims 24-34 are hereby withdrawn.

Information Disclosure Statement

2. The information disclosure statements filed 6/18/01, 6/6/02 and 7/15/02 have been received and made of record in the application file wrapper. Note the acknowledged PTO-1449 forms enclosed herewith.

Drawings

3. The corrected or substitute drawings were received on 6/18/01. These drawings are approved by the examiner.

Response to Amendment

4. The preliminary amendment filed on 3/1/02 has been received and made of record in the application file wrapper. The specification has been amended as requested.

Specification

5. The disclosure is objected to because of the following informalities: the examiner cannot locate Appendix A as stated on page 15, line 4.

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6. Additionally, in order to minimize the necessity in the future of converting dimensions given in the English system of measurements to the metric system of measurements when using printed patents as research and prior art search documents, all patent applicants should use the metric (S. I.) units followed by the equivalent English units when describing their invention in the specifications of patent applications. As such the units of the diameter of the ports must be changed to include the metric system of units.

Appropriate correction is required.

Claim Objections

7. Claim 8 is objected to because of the following informalities:

Claim 8, line 2, "devise" should read --device--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 1-3 and 5-11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,583,602 ("Gruber") in view of U.S. Patent No. 5,509,187 ("Sperry et al.").

As regards claim 1, Gruber discloses a dripless fluid spray apparatus comprising a reservoir housing (body 2) and a removable discharge means (3), which discharges a pressurized stream of fluid.

Gruber fails to teach the fluid is a wound irrigation solution. However, Sperry et al. teach a reservoir housing having wound irrigation solution for irrigating a wound. In view of Sperry et al., it would have been obvious to one having ordinary skill in the art to modify Gruber by adding a wound irrigation solution to the reservoir of Gruber in order provide dripless dispensing of the wound irrigation fluid to a user.

As regards claim 2, the portion of discharge means (3) that includes apertures (7) is a flat disc.

As regards claim 3, the ports of the instant claim read on apertures (7).

As regards claim 5, as can be seen from Fig. 1, Gruber discloses at least four ports (apertures).

As regards claim 6, Gruber is silent as to the diameter of the apertures and therefore fails to teach that the diameter of the apertures is above 0.04 inches.

However, the examiner contends that it has been held that a change in size of a prior

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art device is a design consideration within the level of ordinary skill in the art. *In re rose*, 220 F.2d 459 669, 149 USPQ 47 (CCPA 1966).

Additionally, one having ordinary skill in the art would have found it within the level of ordinary skill in the art to adjust the diameter of the apertures depending upon the desired droplet size as well as the desired force of the fluid.

As regards claim 7, the reservoir housing of Gruber has a threaded neck (col. 1, lines 69-71) and an inherent opening, which allows for fluid flow from the housing to the dispensing means.

As regards claim 8, note the rejection of claim 7 above. Additionally, it is inherent that the flat disc is positioned over the opening.

As regards claim 9, note marked-up Fig. 1 of Gruber, which shows an end cap shown in Fig. 1.

As regard claim 10, cap (4) of Gruber reads on the protective membrane of the instant claim.

As regards claim 11, the portion of the dispensing means connecting the cap to the end cap is considered the pull tab in that it can be pulled to release the cap and uncover the apertures.

As regards claim 15, the modified device of Grubber fails to teach the disclosed adjustable discharge means. However, the examiner contends that the rate of discharge of the irrigation fluid can be adjusted by adjusting the amount of force used to pressurize the fluid.

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11. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruber in view of Sperry et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,133,701 ("Han").

As regards claims 12 and 13, both Gruber and Sperry et al. fail to teach a splashguard. However, Han teaches it is conventional to provide wound irrigation devices with hemispherical splashguards in order to prevent the back splashed irrigated fluid from contacting the physician.

In view of Han, it would have been obvious to provide the modified device of Gruber with a hemispherical splashguard in order to prevent the back splashed fluid from contacting the user.

As regards claim 14, the modified device of Gruber fails to include a splashguard having a removable protective cap. However, the examiner contends that since it is known to provide protective caps on components for dispensing fluids (e.g., the discharge means), one having ordinary skill in the art would have been motivated to also provide protective caps on any other components of the dispensing device that fluid may contact and then subsequently contact the wound.

Allowable Subject Matter

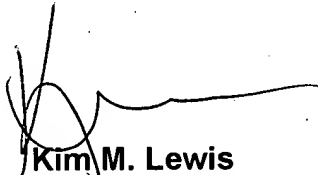
12. Claims 4 and 16-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays and Tuesdays from 6:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703.308.1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.3590 for regular communications and 703.305.3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.



Kim M. Lewis
Primary Examiner
Art Unit 3761

kml
August 11, 2003